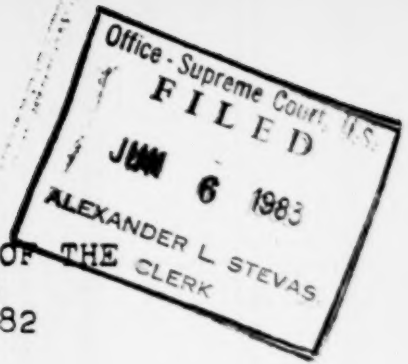


82-2027



IN THE SUPREME COURT-OF
UNITED STATES
OCTOBER TERM, 1982

NO. _____

DALE EUGENE SCHMIDT,
Petitioner,

v.

STATE OF IOWA, THOMAS J. MILLER,
ATTORNEY GENERAL OF STATE OF ICWA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Was petitioner denied Assistance of Counsel?
2. Was petitioner denied right to confront witness against him?
3. Was petitioner compelled to be a witness against himself?

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

DALE EUGENE SCHMIDT, petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above-entitled case on 9 March 1983.

OPINIONS BELOW

The orders of 7 February 1983 and 9 March 1983 of the United States Court of Appeals for the Eighth Circuit are printed in Appendix A hereto, *infra*. The Judgment and order of the United States District Court for the Northern District of Iowa of 13 December 1982 are printed in Appendix B.

JURISDICTION

The order of the United States Court of Appeals for the Eighth Circuit was entered on 7 February 1983. A timely petition for reconsideration was denied on 9 March 1983.

Said denial is printed in Appendix A, infra.
The jurisdiction of the Supreme Court is
invoked under 28 U.S.C.S. section 1254.

QUESTIONS PRESENTED

1. Was petitioner denied Assistance of Counsel?
2. Was petitioner denied right to confront witness against him?
3. Was petitioner compelled to be a witness against himself?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall...be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall...be confronted with the witnesses against him...and to have the Assistance of Counsel for his defence.

United States Constitution, Amendment XIV:

No state shall...deprive any person of life, liberty, or property without due process of law; nor deny to any person...the equal protection of the laws.

STATEMENT OF CASE

Petitioner was charged with operating a motor vehicle under the influence of alcohol. At police station petitioner was read partial Miranda warning. Being unemployed and with no income, petitioner requested Assistance of Counsel. Police said they could not do that and continued questioning which was used at trial.

At no time did petitioner waive right to counsel (Transcript, page 5, line 8).

Moments before trial, Magistrate instructed prosecutor to "help him, too, with preemptory challenges, to show him the lines." (Transcript, page 17, lines 2 and 3).

A prosecution witness, Mr. Rehberg, submitted written testimony used at trial, but was not present for cross-examination.

Petitioner was convicted and appealed to Iowa Supreme Court which refused to "reach the question whether defendant's right to counsel was violated by the state."

Petitioner appealed to United States

District Court which cited Wainright v. Sykes, 433 U.S. 72, 90 (1976) where there were no "contemporaneous objections." In the present case there were clearly "contemporaneous objections."

Petitioner appealed to Court of Appeals which affirmed District Court with no reasons.

REASONS FOR GRANTING THE WRIT

On 17 December 1981 the Honorable President Ronald Reagan made the following statement:

"I recognize also that one of the prime responsibilities of the Federal Government is to assure that not one single citizen in this country can be denied his or her constitutional rights without the Federal Government coming in and guaranteeing those rights." (New York Times, Dec. 18, 1981).

Since petitioner has been denied his constitutional rights, it behooves this Honorable Court to review the record and come in and guarantee those rights.

DATED:

3 June 1983

Respectfully submitted,
Dale Eugene Schmidt
Dale Eugene Schmidt, pro se
532 - 13th Street, S.E.
Mason City, Iowa 50401

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Misc. No. 83-8010

Dale Eugene Schmidt,

Appellant

vs.

State of Iowa, et al,

Appellees.

O R D E R

Appellant's motion for reconsideration
of this Court's order of February 7, 1983
is denied. The order remains in full
force and effect.

March 9, 1983

APPENDIX -A1-

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Misc. No. 83-8010

Dale Eugene Schmidt,
Appellant,

vs.

State of Iowa and Attorney
General of the State of Iowa,
Appellees.

O R D E R

This prospective state habeas corpus case from the United States District Court for the Northern District of Iowa comes before the court on consideration of appellant's application for certificate of probable cause. In connection therewith, the Court has carefully examined the original file of the aforesaid district court in case number C-82-151. Being fully advised in the premises, it is now here ordered that appellant's application for certificate of probable cause be, and it is hereby, denied.

February 7, 1983

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
Civil Action File No. C 82-151

DALE EUGENE SCHMIDT,
Plaintiff,

vs.

STATE OF IOWA and ATTORNEY GENERAL
OF THE STATE OF IOWA,

Defendants.

JUDGMENT

This action came on for decision before the Court, Honorable Edward J. McManus, United States District Judge, presiding, and the issues having been duly decided and a decision having been duly rendered, It is Ordered and Adjudged that the plaintiff take nothing, that the action be dismissed.

Dated at Cedar Rapids, Iowa, this 13th day of December, 1982

William J. Kanak-Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

DALE EUGENE SCHMIDT
Petitioner,

NO. C 82-151

vs.

STATE OF IOWA, and the ATTORNEY
GENERAL OF THE STATE OF IOWA
Respondent.

ORDER

This matter is before the court on petitioner's amendment to his petition filed on December 6, 1982 in response to the court's order of November 23, 1982. Dismissed.

In the November 23, 1982 order the court dismissed the petition in which the only claim was that petitioner's right to counsel was denied at the time that certain incriminating evidence used at trial was adduced from petitioner. The basis for the dismissal was that the question of admission of the evidence was not properly preserved for state appellate review and therefore could not be considered in a habeas corpus action absent a showing of cause for the

noncompliance and some showing of actual prejudice. Wainright v. Sykes, 433 U.S. 72, 90 (1976); Hicks v. Scurr, 671 F.2d 255, 259 (8th Cir. 1982). Plaintiff, however, was given an opportunity to amend his petition to show the "cause" and "prejudice."

In his amendment petitioner asserts that sufficient objections were made in the state proceedings to constitute preservation of the question of admission for appellate review. Petitioner also cites the difference between the present case where objections were made at some points in the proceedings to the admission of the evidence but not at all points and the facts in Wainright where no objections to the admission of evidence were made.

The court concludes, however, that petitioner has failed to show cause for the noncompliance with the contemporaneous objection rule and has failed to make any showing of prejudice. The state is entitled

to interpret petitioner's counsel's failure to object to the admission of the evidence as a waiver of any previous objections and Wainright does not preclude state courts from applying this waiver principle as part of the contemporaneous objection rule.

It is therefore

ORDERED

Dismissed.

December 13, 1982.

/s/
Edward J. McManus, Chief Judge
UNITED STATES DISTRICT COURT

AFFIDAVIT OF SERVICE

Pursuant to Rule 28.5(c) of the United States Supreme Court, I hereby certify that on the 3rd day of June, 1983, I mailed first class postage prepaid from Mason City, Iowa, forty copies of the foregoing Petition for Writ of Certiorari to the Clerk of the United States Supreme Court and three copies to Honorable Thomas J. Miller, Attorney General of the State of Iowa, Hoover Building, Des Moines, Iowa 50319.

Dale Eugene Schmidt

Dale Eugene Schmidt
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